

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:18:CR:211

TYRONE ANTUAN HOLLIN,

HON. GORDON J. QUIST

Defendant.

**OPINION AND ORDER DENYING
DEFENDANT'S MOTION TO SUPPRESS**

Defendant, Tyrone Antuan Hollin, is charged with attempted distribution of more than 500 grams of methamphetamine and unlawful use of a communication facility. Hollin has filed a motion to suppress evidence found in a priority-mail parcel that was seized and then opened pursuant to a warrant. (ECF No. 31.) The government filed a response. (ECF No. 33.) Hollin filed a reply. (ECF No. 35.) On multiple grounds, the Court will deny Hollin's motion to suppress.

I. Background

On Friday, July 6, 2018, Hollin sent a package via United States Postal Service (USPS) Priority Mail from Riverside, California. The package weighed 15 pounds and 9 ounces. The postage and fees for mailing the package were \$46.75. The package was addressed to W. Trice, 1823 N. Edwards St., Kalamazoo, MI 49007. The return address was P. Washington, 6979 Palm Ct. Apt. 105, Riverside, CA 92506. Hollin has not claimed that "W. Trice" or "P. Washington" were his aliases or that he was the intended recipient of the package but rather than he was a bailee, sending the package on behalf of a friend or relative in California.

On Saturday, July 7, 2018, postal inspectors in Grand Rapids, Michigan, received information from postal inspectors in Los Angeles, California, that a parcel was destined for Kalamazoo, Michigan, that was believed to be connected to an active investigation regarding the mailing of various amounts of methamphetamine and heroin. (Appl. for Search Warrant ¶ 8, ECF No. 33-1.)

On Monday, July 9, 2018, Postal Inspector Mark Rossi took possession of the parcel at the Westwood Post Office in Kalamazoo. On examination, Rossi determined that the package showed several characteristics that indicated that it might be carrying a controlled substance or proceeds. (*Id.* ¶ 9.) Rossi explained that the United States Postal Inspection Service (USPIS) had conducted an analysis of prior packages that were found to contain controlled substances or proceeds and had identified a list of characteristics that, when found in combination of two or more, indicated the presence of a controlled substance or proceeds. Based on the USPIS list of factors and Rossi's twelve years of experience with USPIS, he determined that the package indicated the presence of a controlled substance or proceeds based on the following characteristics: (1) the box was heavily taped; (2) the addressee and return names did not associate to the addresses listed; (3) the package was mailed from the Southern California area; (4) the package was sent Priority Mail from an individual to another individual, whereas Priority Mail is generally used for business correspondence; and (5) the package was heavier and cost more to ship than most packages sent as individual-to-individual correspondence. (*Id.* ¶¶ 4-5, 10-11.)

That same day, Rossi met with Trooper J. Bozek of the Michigan State Police (MSP) at the USPIS Office in Grand Rapids. Bozek brought "Yaro," a controlled substance detection canine. Bozek and Yaro were originally trained as a controlled substance detection team with MSP in August 2012, trained together weekly, and received certification annually. Their MSP certification

was current and valid on July 9, 2018. At approximately 11:53 a.m. that morning, Rossi arranged a controlled substance detection test with the subject parcel and four similar parcels. Yaro alerted only to the subject parcel. (*Id.* ¶¶ 12-13.)

Based on the above information, Magistrate Judge Ellen Carmody signed a warrant authorizing the search of the package. The package was opened pursuant to the warrant and 12 baggies of suspected methamphetamine with a gross weight of 12 pounds and 6 ounces were found inside the package. (ECF No. 33-1 at PageID. 152.)

II. Analysis

Before reaching the merits of Hollin’s suppression argument, Hollin “has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.” *Rakas v. Illinois*, 439 U.S. 128, 130 n. 1, 99 S. Ct. 421, 424 (1978). In other words, Hollin must “establish . . . that he himself was the victim of an invasion of privacy.” *Alderman v. United States*, 394 U.S. 165, 173, 89 S. Ct. 961, 966 (1969). To establish standing and avail himself of Fourth Amendment protection, Hollin must show that he had a legitimate expectation of privacy in the package and that his subjective expectation of privacy was reasonable. *Minnesota v. Olson*, 495 U.S. 91, 95–96, 110 S. Ct. 1684, 1687 (1990). Someone with a possessory interest, but not an ownership interest, in property has a reasonable expectation of privacy in the property if he can show lawful possession and control. *Byrd v. United States*, 138 S. Ct. 1518, 1523–24 (2018).

In this case, Hollin claims that he mailed the package on behalf of a friend or relative and that his status as a “bailee” granted him a sufficient possessory interest to have standing to challenge the search and seizure of the package. However, the Court finds that while Hollin may have had a subjective expectation of privacy in the package, that expectation is not reasonable.

“Letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy[.]” *United States v. Jacobsen*, 466 U.S. 109, 114, 104 S. Ct. 1652, 1657 (1984). Generally, however, a person who is neither the sender or addressee of a letter or package does not have standing to challenge the search or seizure of a package. *United States v. Smith*, 39 F.3d 1143, 1145 (11th Cir. 1994). In *Smith*, the circuit court held that the defendant did not have a legitimate expectation of privacy in a letter that he put in the envelope because his testimony regarding his ownership of the contents of the letter was equivocal and he was neither the sender nor the addressee of the letter. *Id.* Similarly, a panel of the Sixth Circuit concluded that a defendant lacked standing to challenge a search and seizure of a package because she did not send the package, the package was not addressed to her, and the package was not mailed to her address. *United States v. Elgin*, 57 F. App’x 659, 661 (6th Cir. 2003).

Hollin argues that this Court should reach a different result on the question of standing because, although he disclaims an ownership interest in the contents of the package and he was not the intended recipient of the package, he had a possessory interest in the package because he was the person who physically mailed the package. There are two problems with Hollin’s argument: (1) he abandoned his interest in the package, and (2) even if he could claim a possessory interest, that interest would apply only to the probable cause determination.

Abandoned property enjoys no Fourth Amendment protection. *Abel v. United States*, 362 U.S. 217, 241, 80 S. Ct. 683, 698 (1960); *United States v. Pitts*, 322 F.3d 449, 455–56 (7th Cir. 2003). Assuming arguendo that Hollin was a bailee, he would have maintained a possessory interest in the package only up until he “launched the package into the stream of mail without any legitimate way of retrieving it.” *Pitts*, 322 F.3d at 456. At that point, Hollin no longer had possession or control of the package. In *Pitts*, the circuit court held that the defendant who mailed

the package had abandoned his possessory interest as bailee when he could not show proper identification to retrieve the package because he was not listed as the return addressee. *Id.* at 456-57. Hollin is in the same (leaky) boat. While he argues that Priority Mail offers several options for the sender to exercise control, such as stopping mail and packages at a post office for the shipper to pick up or redirecting a package back to the shipper's address (Def.'s Reply, ECF No. 35 at PageID.162), these options are available only to the person listed on the return address. Hollin appears to argue that he still could have retrieved the package because he could have gone to the post office with the someone who had the correct identification (*id.* at PageID.163 n.1), but having the owner retrieve the package would negate Hollin's possessory interest as bailee.

Even if Hollin could show that his possessory interest in the package sufficed to establish standing with respect to the package, he cannot challenge whether the government had a reasonable suspicion to temporarily detain the package; he can only challenge probable cause. Hollin claims that the government had to have reasonable suspicion to justify holding the package past its guaranteed delivery time when Rossi visually inspected the package and arranged for a canine detection test. But, only the *addressee* of a package has a possessory interest in the guaranteed delivery time of a package.¹ *United States v. Jefferson*, 566 F.3d 928, 934 (9th Cir. 2009). And visual inspection and the use of a narcotics-detection dog are not subject to Fourth Amendment protection as long as they do not interfere with a possessory interest in the guaranteed delivery time of a package. *Id.* at 933. So Hollin cannot insist on a reasonable suspicion to justify a short detention of the package for investigation purposes.²

¹ The Court also notes that Hollin did not establish that the investigation went past the guaranteed delivery time. The package was sent on a Friday with a two-day delivery guarantee, but because USPS does not deliver on Sundays, the package was scheduled to arrive sometime on Monday. On Monday, the magistrate judge reviewed the search warrant application and authorized the search based on a finding of probable cause.

² Even if Hollin could challenge whether the government had reasonable suspicion to briefly detain the package, the Eighth Circuit in *United States v. Gomez*, 312 F.3d 920, 922-25 (8th Cir. 2002), found that detention of a package was supported by reasonable suspicion based on nearly identical facts.

Turning to the probable cause analysis, “it is well settled that an alert from a trained dog provides probable cause for a search for drugs.” *United States v. Kelley*, 459 F. App’x 527, 532 (6th Cir. 2012) (citing *United States v. Hill*, 195 F.3d 258, 273 (6th Cir.1999)). Therefore, once Yaro alerted to the package, the magistrate judge was justified in finding probable cause to authorize authorities to search the package for controlled substances.

Hollin argues that even if the government had probable cause to search for controlled substances and proceeds, the warrant was overbroad in that it authorized the seizure of “other items associated with drug trafficking, such as records, notes and correspondence, currency, and/or evidence tending to identify the source of the package and the intended recipient contained in the subject parcel.” (Warrant, ECF No. 33-1 at PageID.151.) This is not overbroad. The Sixth Circuit requires only that “the scope of the warrant . . . be confined to evidence relating to a specific crime, supported by probable cause.” *United States v. Hanna*, 661 F.3d 271, 286 (6th Cir. 2011). All the evidence sought by the warrant was connected to the specific crime of drug trafficking, and the alert from Yaro provided probable cause that evidence of drug trafficking would be found in the package. Even if Hollin could make a colorable argument that the warrant was overbroad, “infirmity due to overbreadth does not doom the entire warrant; rather, it requires the suppression of evidence seized pursuant to that part of the warrant but does not require the suppression of anything described in the valid portions.” *Id.* (internal quotation marks and alterations omitted). The search for controlled substances was supported by probable cause, and the package contained only methamphetamine—precisely the object of the valid search and seizure.

Because the Court finds that the warrant was supported by probable cause, it will not address the issue of good faith.

III. Conclusion

For the foregoing reasons,

IT IS HEREBY ORDERED that Defendant Hollin's Motion to Suppress Evidence (ECF No. 31) is **denied**.

Dated: July 10, 2019

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE